

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 879 of 1997

in

SPECIAL CIVIL APPLICATION No 1977 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

AJAY CORRUGATING AND PLASTIC PVT. LTD

Versus

STATE OF GUJARAT

Appearance:

Mr. K N Rawal instructed by MR BH CHHATRAPATI for
the petitioners.

Ms. Katha Gajjar, AGP for Respondent Nos. 1 to 3.

M/S MG DOSHIT & CO for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 20/08/97

Admitted. Ms. Katha Gajjar, learned AGP appears and waives service of notice of admission on behalf of respondent nos. 1 to 3. Mr. M.G.Doshit, waives service of notice of admission on behalf of respondent no.4. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is filed against an order passed by the learned Single Judge summarily dismissing Special Civil Application No. 1977 of 1997 on July 30,1997.

3. The appellants are the original petitioners. They approached this Court by filing the above petition for an appropriate writ, direction or order directing the respondent authorities to extend benefits of tax incentives as also benefit of subsidy. When the matter was taken up for hearing, the learned Single Judge was of the view that the petition was premature inasmuch as the questions sought to be agitated in the petition were not decided by the authorities. It was stated to the learned Single Judge that a Committee was appointed which will consider both the prayers of the petitioners and the decision would be taken within a short time. The learned Single Judge was therefore of the view that the petition could not be entertained at that stage, and accordingly he dismissed the petition observing that the amount sought to be recovered by way of payment of tax, should not be recovered if the petitioner gave an undertaking that if the decision of the Committee would be against them, they will pay the amount within two weeks from the date of such decision.

4. Mr. K.N.Rawal instructed by Mr. Chhatrapati submitted that it is true that the Committee has not finally decided the question. He also conceded that the Committee will decide the matter and at that time, the Committee will take into account all the facts and circumstances. He however, submitted that when the learned Single Judge passed the order granting protection to the petitioners for two weeks on condition that the appellants will give an undertaking that they will pay the amount, it must be without prejudice to approach this Court and giving of undertaking should not come in the way of the appellants in getting appropriate relief within the said period of two weeks by approaching an appropriate Court including this Court.

5. We find considerable force in the argument of Mr. Rawal. The order passed by the learned Single Judge that the petition is premature, is well founded and we see no reason to interfere with it. We are also of the view that the direction issued to the appellants to give an undertaking that after the order passed by the Committee if the order will be against them, they will make payment is also proper. That direction is, however, subject to a clarification that if the appellants are aggrieved by the decision rendered by the Committee, it is open to them to approach appropriate authority including this Court within that period and to obtain an appropriate order from the Court. It is also directed that if the order is against the appellants and if they intend to approach any authority and/or Court and pray for interim relief, a copy of such appeal/application/petition will be served to all the respondents.

6. We clarify that we are not expressing any opinion on merits of the matter and as and when the matter will be considered by the Committee, the Committee will decide the same strictly in accordance with law without in any manner, being influenced by this order. The undertaking will be without prejudice to the rights and contentions of the appellants. The undertaking is to be filed within two weeks from today.

7. The appeal is accordingly partly allowed to the above extent. No order as to costs.

(C.K.Thakkar,J)

(S.D.Pandit,J(

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